

CRIMINAL APPEAL NO.941 OF 1984.

Date of decision: 16.12.1995.

For approval and signature

The Honourable Mr. Justice S. M. Soni

and

The Honourable Mr. Justice R. R. Jain

Mr. P.S. Champenari, APP, for appellant-State.

Mr. V.T. Acharya, advocate for respondent.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.M. Soni & R.R. Jain, JJ.

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December 16, 1995.

Oral judgment (Per Soni, J.)

State, being aggrieved by the judgment and order passed by the learned Sessions Judge, Rajkot, in Sessions Case No.7 of 1984, has challenged the order of acquittal, by this appeal.

The case of the prosecution, in brief, is that, complainant - Ramesh Lalji Suthar, resident of Kaduka of Jasdan Taluka, District Rajkot, in company of his mother

- deceased Savitaben and two younger daughters, owned a piece of agricultural land. According to the prosecution, one Mithabhai Koli used to cultivate the said land. Respondent/accused was working with said Mithabhai Koli for the purpose of cultivation. The accused had some dispute with regard to his right over the land with the complainant and his mother and, therefore, a week before the incident, accused tried to assault the complainant- Ramesh at his residence. On 21.12.1983, when Ramesh was passing near Chora of village Kaduka, the accused, who was sitting at the nearby shop, assaulted the complainant by kick and fist blows. Seeing this assault on Ramesh, deceased Savitaben and her two daughters rushed to the scene of occurrence to save her son Ramesh. At that time the accused gave a kick blow on the stomach region of the upper part abdomen of Savitaben, who, as a result of which, fell down. She was rushed to hospital on a motor bike. But she died on the way.

In view of these facts, Ramesh filed the complainant and offence was registered against the accused/respondent.

On completion of the investigation, the accused was charge-sheeted and was tried by the learned Sessions Judge as he did not plead guilty and prayed for trial.

The learned Sessions Judge, after trial and appreciating the evidence on record, ordered acquittal of the accused, which is under challenge in this appeal.

This order of acquittal is challenged on the ground that the order of acquittal is not warranted by evidence on record inasmuch as there is a positive evidence of Doctor to the effect that deceased died due to neurogenic shock caused due to the kick injury on the abdomen and there is a specific evidence to the effect that the accused gave a kick blow on the abdomen of the deceased. If these two things are read together, case of the prosecution is proved and the learned Sessions Judge has erred in acquitting the accused.

Learned A.P.P. Mr. Champenari, has taken us through the whole evidence and in particular that of Dr.Pravinchandra Popatlal Changela. It is clear from the evidence that the accused assaulted the complainant Ramesh and in the course of that assault, deceased Savitaben tried to intervene, may be with a view to save her son Ramesh. But at that point of time the accused gave a kick blow, may be with an intention to assault Savitaben or to keep her away from carrying his act of assault on Ramesh. In

any case, by the kick blow, Savitaben was injured and fell down. Thus, it is proved that kick blow is given by accused to Savitaben on her abdomen.

Short question that is required to be considered is whether Savitaben died because of the kick blow given on her abdomen, causing neurogenic shock, as opined by the doctor.

In paragraphs 17 and 18, it has been specifically held by the Sessions Judge, and in our opinion, rightly, that the say of the doctor that deceased died of neurogenic shock cannot be accepted. There is no sufficient material on record to link the kick with the shock. This finding of the learned Sessions Judge is further corroborated by evidence of the doctor and the postmortem notes to the effect that neither external injury nor internal injury which may have been caused because of the kick, are found. Thus, when we do not accept the cause of death by neurogenic shock, question remains, particularly when the act of kick blow on deceased is established.

From the evidence of the complainant and P.W.3 and P.W.4, Dhirubhai Rambhai and Kanabhai Mansurbhai respectively, the assault on abdomen by kick is proved. When no external injury or internal injury is caused by the kick and when the kick blow is established, it can be said that at the most it amounts to an offence under Section 323 of the Indian Penal Code for which the maximum punishment provided is one year or fine of Rs.1,000/- or both. It is very clear from the evidence of eye witnesses as well as the complainant that the accused had never intended to assault the victim- Savitaben. It was only with a view to keep her away that the kick blow was given to her. Therefore, it cannot be said that the said kick blow was given with a view to cause any injury to the deceased Savitaben and in ordinary course of nature, a kick blow whereby no external or internal injury is caused, is not sufficient to cause death.

From the record, it is clear that the incident took place on 21.12.1983. The judgment of acquittal came to be delivered on 14.5.1984 which shows that the accused was on bail. The accused was arrested on 22.12.1983 and was released on bail on 17.2.1984. For an offence punishable under Section 323 of the Indian Penal Code, when the maximum punishment provided is one year, this court is required to consider the case of sending a person in jail, after 11 to 12 years. Therefore, it will serve the interest of justice if the accused is ordered to undergo the sentence which he has already undergone as under

trial prisoner.

In view of these facts, we pass the following order:

Appeal is partly allowed. Respondent/accused is held guilty of the offence punishable under Section 323 of the Indian Penal Code and is ordered to undergo the sentence already undergone. Order accordingly.